



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------|------------------|
| 10/735,156   | 12/12/2003  | Bertrand Lion        | LOREAL 3.0-002;<br>OA02420/U | 3506             |
| 530  | 7590        | 10/23/2006           | EXAMINER                     |                  |
| LERNER, DAVID, LITTENBERG,<br>KRUMHOLZ & MENTLIK<br>600 SOUTH AVENUE WEST<br>WESTFIELD, NJ 07090 |             |                      | ROGERS, JAMES WILLIAM        |                  |
|  |             |                      | ART UNIT                     | PAPER NUMBER     |
|  |             |                      | 1618                         |                  |

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                    |                                |  |
|------------------------------|------------------------------------|--------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/735,156      | Applicant(s)<br>LION, BERTRAND |  |
|                              | Examiner<br>James W. Rogers, Ph.D. | Art Unit<br>1618               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4 and 10-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 10-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/11/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The amendment to the claims filed 09/11/2006 has been entered. In the response the applicant stated that claims 5-9 and 23-27 are allowable because no rejection was made on these claims. The examiner will call to the attention to the applicant that claims 5-9 and 23-27 were cancelled as being related to non-elected material, please see election restriction filed 04/18/2006 and applicants response to election restriction filed 05/12/2006 in which applicants clearly elected group I claims 1-4 and 10-22, therefore claims 5-9 and 23-27 are not allowable. Any rejection from the previous office action dated 06/08/2006 not addressed herein have been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-4 and 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sebag et al. (US 6,403,106 B1), for the reasons set forth in the office action mailed 04/06/2006

Claims 1,3-4 and 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mougin et al. (US 6,113,882), for the reasons set forth in the office action mailed 04/06/2006.

Applicant's arguments filed 09/11/2006 have been fully considered but they are not persuasive.

Applicant asserts that as amended the prior arts (Sebag and Mougin) solvents (C<sub>1</sub>-C<sub>4</sub> alcohols and water) would not have the same global solubility parameter according to the Hansen solubility space expressed in newly amended claim 1.

The relevance of this assertion is unclear. The examiner upon reviewing the data included by the applicants (CRC Handbook or Solubility Parameters and other Cohesion Parameters, pages 153-157) acknowledges that C<sub>1</sub>-C<sub>4</sub> alcohols and water would not meet this limitation. However as stated in the previous office action dated 06/08/2006 both Sebag and Mougin disclose several adjuvants such as fatty oils (including vegetable oil) that would have the above solubility parameter as disclosed within applicants own specification, therefore the limitation is met by Sebag and Mougin.

### ***Conclusion***

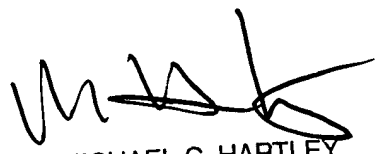
No claims are allowed at this time.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers, Ph.D. whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 271-0616. The fax phone number for the organization where this application or proceeding is assigned is 572-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER